

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT JOHN COLLINS,

Defendant - Appellant.

No. 99-17361

D.C. Nos. CV-98-00114-DWH
CR-95-00035-DWH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
David Warner Hagen, District Judge, Presiding

Submitted January 12, 2006^{**}
San Francisco, California

Before: TASHIMA and W. FLETCHER, Circuit Judges, and SHEA^{***},
District Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Edward F. Shea, United States District Judge for the Eastern District of Washington, sitting by designation.

Appellant Robert Collins appeals the district court's dismissal of his 28 U.S.C. § 2255 motion. The district court summarily dismissed Collins's motion without ordering a response from the government or holding an evidentiary hearing.

The district court's decision to grant or deny a federal prisoner's § 2255 motion is reviewed de novo. *United States v. Rodrigues*, 347 F.3d 818, 823 (9th Cir. 2003). Summary dismissal was improper unless Collins's allegations, when viewed against the record, do not state a claim for relief or are palpably incredible or patently frivolous. *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984).

We have thoroughly reviewed the record in this case and hold that Collins's claims are either palpably incredible or patently frivolous. There is insufficient evidence in the record to support Collins's allegations of ineffective assistance of counsel, and prosecutorial misconduct. Therefore, the district court did not err in summarily dismissing Collins's § 2255 motion.

AFFIRMED.